

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

OUTMEMPHIS; MICHELLE)
ANDERSON; JANE DOE 2;)
JANE DOE 3; and JANE DOE 4,)
)
Plaintiffs,)
v.)
)
BILL LEE, in his official capacity as)
Governor of Tennessee; JONATHAN)
SKRMETTI, in his official capacity as)
Attorney General and Reporter of)
Tennessee; DAVID RAUSCH, in his)
official capacity as Director of the)
Tennessee Bureau of Investigation;)
and FRANK STRADA, in his official)
capacity as Commissioner of the)
Tennessee Department of Correction,)
)
Defendants.)
-----)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
)
STATE OF TENNESSEE, and)
TENNESSEE BUREAU OF)
INVESTIGATION,)
)
Defendants.)

Case Nos. 2:23-CV-2670
2:24-cv-02101

Chief Judge Lipman

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants Governor Bill Lee, Attorney General Jonathan Skrmetti, TBI Director David Rausch, and Commissioner Frank Strada (“State Officials”), hereby give notice of the existence of new binding authority that supports their pending Motion to Dismiss Plaintiffs’ First Amended Complaint (Dkt. 66). On May 15, 2024, the Sixth Circuit released its opinion in *Does 1-9 v. Lee*,

No. 23-5248 (attached as Exhibit 1). That opinion was unavailable to the parties before briefing on the State Officials' Motion was complete, but the Sixth Circuit has now resolved at least three issues that are directly related to arguments raised in briefing on the State Officials' Motion.

First, the Sixth Circuit held that a Governor's "take care" duty and authority to remove officials from their posts are "insufficient alone to confer standing" against the Governor in a suit challenging a state statute. Slip Op. at 6-7. This holding is directly relevant to the arguments advanced by Governor Lee and General Skrmetti in Parts I(A) and II(B) of their Memorandum supporting their Motion to Dismiss. (*See* Dkt. 66-1, at 23-24, 32; *see also* Dkt. 88, at 2-5.)

Second, the Sixth Circuit reaffirmed that the reporting, registration, and publication requirements of the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act "pass constitutional muster." Slip Op. at 11-12. Because these requirements "'are not of a type that we have traditionally considered as a punishment,' . . . a registry kept by the state and disclosed publicly is constitutionally sound." Slip Op. at 12 (quoting *Doe v. Bredesen*, 507 F.3d 998, 1005 (6th Cir. 2007)). This holding is directly relevant to the arguments advanced by the State Officials in Part V of their Memorandum. (*See* Dkt. 66-1, at 59-62.)

Third, the Sixth Circuit held that an injunction against Director Rausch was inappropriate when all of the functions assigned to Director Rausch and challenged by the plaintiffs "fall squarely within the legitimate regulatory scheme which Tennessee is constitutionally allowed to provide and maintain." Slip Op. at 14-15. Thus, either an injunction or declaratory judgment that sought to bind other nonparties would be "powerless." Slip Op. at 16. This holding is directly relevant to the arguments advanced by the State Officials in Part VI of their Memorandum. (*See* Dkt. 66-1, at 62-63; *see also* Dkt. 88, at 13.)

Accordingly, the State Officials submit the Sixth Circuit's opinion in *Does 1-9 v. Lee*, No. 23-5248, as supplemental authority in support of their Motion to Dismiss Plaintiffs' First Amended Complaint.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2024, a true and exact copy of the foregoing was served via the court's service system upon counsel as follows:

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